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OFFICE OF PETITIONS

In re Application of :
Rasanen et al. : DECISION ON PETITION TO
Application No. 10/024282 : WITHDRAW HOLDING OF
Filed: 12/21/2001 : ABANDONMENT
Attorney Docket No. 4208-4013 :

This is a decision on the "PETITION TO WITHDRAW HOLDING OF ABANDONMENT BASED ON FAILURE TO RECEIVE OFFICE COMMUNICATION" filed on 22 December, 2006, to withdraw the holding of abandonment in the above-identified application.

The petition is **GRANTED**.

A Notice of Abandonment was mailed on 24 October, 2006, stating that the application was abandoned.

A review of the record reveals that:

1. On 26 September, 2005, a non-final Office action was mailed, setting a three (3) month shortened statutory period for reply;
2. On 15 February, 2006, a amendment in response to the Office action and a petition and fee for a two (2) month extension of time were filed;
3. On 17 May, 2006, an Office communication requiring election of species was mailed, setting a one (1) month shortened period for reply;
4. On 17 July, 2006, a Request for Continued Examination (RCE) Transmittal letter was filed, along with a response to the restriction requirement, and a petition and fee for a one (1) month extension of time were filed;

5. On 21 May, 2006, a Notice of Improper Request for Continued Examination (RCE) was mailed;

6. On 24 October, 2006, a Notice of Abandonment was mailed, stating the application was abandoned because the RCE filed on 17 July, 2006, was not a proper reply because a final rejection had not been made.

Petitioner asserts that the holding of abandonment is improper and should be withdrawn because, *inter alia*, the reply filed on 17 July, 2006, should have been considered on the merits.¹

On review, petitioner's argument is well-taken. Specifically, it is noted that the Notice mailed on 21 July, 2006, states, in pertinent part:

Continued examination under 37 CFR 1.114 does not apply to an application unless prosecution of the application is closed. **If the RCE was accompanied by a reply to a non-final Office action, the reply will be entered and considered under 37 CFR 1.111.** If the RCE was not accompanied by a reply, the time period set forth in the last Office action continues to run from the mailing date of that action.

(Emphasis added)

As the reply filed on 17 July, 2006, contained a response to the restriction requirement, the showing of record is that a reply to the outstanding Office action was timely filed and should have been entered and considered under 37 CFR 1.111.

As such, the showing is that a response to the outstanding Office communication was timely filed. As such there is no abandonment in fact.

The holding of abandonment is withdrawn. The Notice of Abandonment is vacated.

The address in the petition is different than the correspondence address. A copy of this decision is being mailed to the address in the petition. All future correspondence, however, will be mailed solely to the address of record.

¹ Petitioners also assert that the Notice mailed on 21 July, 2006, was not received, and has provided a showing in support of the allegation of non-receipt. As the holding of abandonment is improper in view of the Notice, however, as discussed *infra*, the issue of non-receipt does not need to be addressed.

The application is referred to Technology Center Art Unit 2863 for further processing.

Telephone inquiries concerning this matter may be directed to the undersigned at (571)272-3231.



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